

CLIENT ALERT

President Issues Executive Order Formalizing "Team Telecom" and Executive Branch Review of Foreign Involvement in Telecommunications Transactions

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On April 4, 2020, President Trump issued an [Executive Order](#) formalizing the working group colloquially known as "Team Telecom" and its review of certain licensing applications referred to it by the Federal Communications Commission (FCC) for national security and law enforcement concerns. The order comes amidst increasing concern of foreign influence over the U.S. telecommunications network, access, and supply chain. Team Telecom, which has for many years reviewed certain licensing applications referred to the Executive Branch by the FCC for national security and law enforcement concerns as part of the FCC's public interest review, has received heightened attention in the wake of the FCC's denial of China Mobile's licensing application and the recent successful merger of Sprint and T-Mobile.

FCC Chairman Ajit Pai [welcomed the order](#), stating that "[a]s we demonstrated last year in rejecting the China Mobile application, this FCC will not hesitate to act to protect our networks from foreign threats. At the same time, we welcome beneficial investment in our networks and believe that this Executive Order will allow us to process such applications more quickly."

The "Executive Order on Establishing the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector" establishes a committee comprised of three members, including the Secretary of Defense, the Secretary of Homeland Security, and the Attorney General of the Department of Justice, who will also chair the committee, "to assist the FCC in its public interest review of national security and law enforcement concerns that may be raised by foreign participation in the United States telecommunications services sector." Advisors to the committee include the Secretary of State, the Secretary of the Treasury, the Secretary of Commerce, the Director of the Office of Management and Budget, the United States Trade Representative, the Director of National Intelligence (DNI), the Administrator of General Services, the Assistant to the President for National Security Affairs, the Assistant to the President for Economic Policy, the Director of the Office of Science and Technology Policy, the Chair of the Council of Economic Advisers, and any other Assistant to the President, as the President determines appropriate.

The committee's main responsibilities will be to (1) review applications and licenses for risks to national security and law enforcement interests, and (2) to respond to those risks by recommending that the FCC dismiss an application, deny an application, condition the grant of an application upon compliance with mitigation measures, modify a license with a condition of compliance with mitigation measures, or revoke a license.

While committee members and the DNI are to set forth specific procedural norms in a Memorandum of Understanding (MOU) within 90 days of the date of the order, the order outlines an overarching interagency structure for the review of licensing applications, including timelines. Notably, the order also allows the committee to review existing licenses, which could potentially broaden Team Telecom's previous scope of review.

The order also calls for additional rigor to the committee's review process, including the issuance of a national security risk assessment by the DNI for every application under review, and directs committee members to produce a written risk-based analysis to the FCC upon the conclusion of the committee's review and subsequent recommendation to the FCC.

Key takeaways from the order are as follows:

Timeline

Under the order, the committee has 120 days from the date that the chair determines that the applicant's responses to any questions and information requests from the committee are complete to determine:

- That granting an application for a license or the transfer of a license raises no current risk to national security or law enforcement interests;
- That any identified risk to national security or law enforcement interests raised by an application may be addressed through standard mitigation measures recommended by the committee; or
- That a secondary assessment of an application is warranted because risk to national security or law enforcement interests cannot be mitigated by standard mitigation measures.

The committee must complete any secondary assessments within 90 days after the committee's determination that one is warranted.

Committee Review of Existing Licenses

Of significant note is a provision in the order under Section 6 that allows the committee to review existing licenses to identify any additional or new risks to national security or law enforcement interests. Such action will be initiated by a majority vote of the committee members and subsequent notice to the advisors. Upon review of existing licenses, the committee may recommend that the FCC modify the license to include a condition of compliance with mitigation measures, take no action with respect to the license, or revoke the license due to the risk to national security or law enforcement interests.

Collection of Information from the Applicants

As part of the review process, the committee will issue a set of questions and requests for information to the applicants, which will be delineated in the committee's MOU and will likely build upon Team Telecom's existing triage questions. The committee may request additional information from the parties at any time throughout the process. Failure to supply the information may result in an extension of the review process or in a recommendation that the FCC dismiss the application without prejudice.

The order also tasks the DNI, who will designate a liaison from the Intelligence Community to support the committee, with producing a national security threat assessment for each application within 30 days from the date on which the chair determines that an applicant's responses to requests for information or questions are complete or 30 days from the date on which the chair requests such an analysis.

Committee Recommendations to the FCC and Interagency Coordination

Upon conclusion of its initial review or secondary assessment, the committee will:

- Advise the FCC that the committee has no recommendation for the FCC and no objection to the FCC granting the license or transfer of the license;
- Recommend that the FCC deny the application due to the risk to the national security or law enforcement interests of the United States; or
- Recommend that the FCC only grant the license or transfer of the license contingent on the applicant's compliance with mitigation measures.

The procedures aim for consensus by the committee, with the inclusion of the advisors as necessary. The committee must notify the President of any recommendation that the FCC deny a licensing application, condition the grant of the license on non-standard mitigation, modify of a license to condition it upon compliance with non-standard mitigation measures, or revoke a license.

Mitigation and Monitoring

The committee may recommend to the FCC that it condition the grant or transfer of a license on compliance with mitigation measures, which are to be based on a written risk-based analysis. Committee members shall develop methods to monitor any such mitigation and will report back to the committee any non-compliance, and may recommend actions to the FCC as a result of any non-compliance.

Implications for Industry

While the order includes many of the processes that have long been a part of Team Telecom's review of certain applications to the FCC, establishing a formalized process may be welcomed by industry that has clamored for increased transparency and efficiency in the review process. The order could also, however, effectively expand the scope of review by allowing the committee to review existing licenses. Whether this directive is limited to what has heretofore been continuing review of compliance with mitigation agreements that the FCC has conditioned the grant of the license upon, or whether it broadens Team Telecom's prior mandate, remains to be seen in implementation. To that end, industry may find it useful to keep an eye on the promulgation of the MOU in 90 days, which may also provide additional information on what materials the committee expects applicants to submit as part of the review process and what standardized mitigation measures might look like.

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